

ORDINANCE NO. 8813

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER 13, "PARKING PROHIBITED", SECTION 5, "PARKING IN RESIDENCE DISTRICTS", SUBSECTION (G), PARAGRAPH 3 OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO PROHIBIT VEHICULAR PARKING IN THE FRONT YARD AND SIDE YARD OF ANY LOT IN A RESIDENCE DISTRICT OR ANY OTHER LOT USED FOR RESIDENTIAL PURPOSES; SAID ORDINANCE SHALL CONTAIN CERTAIN AFFIRMATIVE DEFENSES TO PROSECUTION; AND PROVIDING FOR A VARIANCE PROCEDURE; SAID ORDINANCE SHALL NOT BE CONSIDERED FOR FINAL PASSAGE ON SECOND READING FOR A MINIMUM OF SIXTY (60) DAYS AFTER PASSAGE ON FIRST READING; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00) AND NOT REQUIRING A CULPABLE MENTAL STATE; ESTABLISHING AN EFFECTIVE DATE OF MAY 1, 2011; AND ORDERING PUBLICATION

WHEREAS, the Midland City Council finds it to be in the public interest to amend Title X "Traffic Regulations", Chapter 13, "Parking Prohibited", Section 5, "Parking in Residence Districts", Subsection (G), Paragraph 3 of the City Code of the City of Midland, Texas; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces may be detrimental to the health, safety and welfare of the public; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces may be aesthetically displeasing and therefore tends to reduce the value of private property; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces may invite vandalism; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces may create a fire hazard; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces may be an attractive nuisance creating a hazard to the health and safety of minors; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces may be a public nuisance; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles in the front yard or side yard of any private residence on unpaved surfaces is potentially harmful to underground utilities; and

WHEREAS, the Midland City Council finds that the practice of parking motor vehicles on a surface paved with asphalt, gravel, rock, caliche, brick, concrete or similar impervious all-weather surface, defined by a border of stone, brick, concrete, metal or decay-resistant wood edging, with a clearly visible line cut between the unpaved surface and the parking space is to be encouraged, as such practice will tend to alleviate the above-referenced factors;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS;

SECTION ONE. That Title X “Traffic Regulations”, Chapter 13, “Parking Prohibited”, Section 5, “Parking in Residence Districts”, Subsection (G), Paragraph 3 of the City Code of the City of Midland, Texas shall hereafter read as follows:

3. The said motor vehicle or motor vehicles must be parked by the Owner on a surface paved with asphalt, gravel, rock, caliche, brick, concrete or similar impervious all-weather surface. This applies to the front yard and side yard.

SECTION TWO. It shall be an affirmative defense to prosecution under this Ordinance that:

- (A) The Owner parked no more than one Motor Vehicle on an unpaved surface on real

property which abuts an unpaved street;

(B) The Owner parked no more than one Motor Vehicle on an unpaved surface on real property which abuts a street without a curb and gutter;

(C) The Owner parked no more than one Motor Vehicle on an unpaved surface on real property which was without a paved or concrete driveway;

(D) The Motor Vehicle or Motor Vehicles parked on unpaved surfaces have valid disabled parking "mirror hang tags" or valid disabled license plates issued in the name of or to the Owner and the Motor Vehicle is properly registered and inspected;

(E) The Motor Vehicle or Motor Vehicles parked on unpaved surfaces, in the side yard on a corner lot, are shielded by a solid fence, at least six feet (6') tall, so that said Motor Vehicles are not visible from the street or other public or private property; or

(F) The Owner's residence was constructed prior to 1980, with a single-car, paved, gravel, rock, caliche, brick or concrete driveway, and said unpaved surface on which the motor vehicle was parked is:

(1) Free of any vegetation;

(2) Directly adjacent and parallel to the single-car paved or concrete driveway or parked in an orderly manner; and

(3) Defined by a border of stone, brick, concrete, metal or decay-resistant wood edging, or a clearly visible line cut between the designated parking space and the surrounding unpaved surfaces.

(G) It shall be an affirmative defense to prosecution under this Ordinance that the Owner of the property:

(1) Owns fee title to multiple rental properties, one such rental property being the property on which the offense occurred;

(2) Is not the registered owner of the motor vehicle parked in violation of this Ordinance; and

(3) Is not related to either the person who parked the vehicle in violation of this

Ordinance, or any person who resides at the rental property on which the offense occurred, by the first degree of consanguinity or the first degree of affinity.

SECTION THREE. Definitions

(A) The term "Owner" means:

(1) A person who has a property interest in or title to the Motor Vehicle;

(2) A person entitled to use or possess the Motor Vehicle;

(3) A person who has a property interest in or title to the real property where the Motor Vehicle is parked according to the records of the Midland Central Appraisal District or the City of Midland's Customer Service Division which bills for water and sewer services; or

(4) A person entitled to use or possess the real property where the Motor Vehicle is parked.

(B) The term "Motor Vehicle" means [1] any motor driven or propelled vehicle required to be registered under the laws of the State of Texas, [2] any trailer or semitrailer, other than manufactured housing, having a gross vehicle weight that exceeds 1,000 pounds, or [3] a house trailer.

(C) The term "park", "parked" or "parking" means to stand or stop an occupied or unoccupied Motor Vehicle.

(D) The term "stand" or "standing" means to halt an occupied or unoccupied Motor Vehicle.

(E) The term "stop", "stopped" or "stopping" means to completely cease movement.

SECTION FOUR. This Ordinance shall not be considered by the Midland City Council for final passage on second reading for a minimum of sixty (60) days after passage on first reading. The City Council shall hold at least one public hearing during this sixty (60) day period.

SECTION FIVE. When any vehicle is parked, stopped or is standing in violation of the provisions of this Ordinance, such fact shall be prima facie evidence that the person in whose name said vehicle is registered is guilty of a violation of the parking provisions herein

contained.

SECTION SIX. When any vehicle is parked, stopped or is standing in violation of the provisions of this Ordinance, such fact shall be prima facie evidence that the Owner is guilty of a violation of the parking provisions herein contained.

SECTION SEVEN. Midland Police Officers or Community Service Officers may enter private property to examine a motor vehicle which the Midland Police Officer or Community Service Officer has probable cause to believe is parked in violation of this Ordinance and to examine a motor vehicle declared to be a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance without the private property owner's consent.

SECTION EIGHT. City of Midland Police Officers are hereby authorized to abate and remove the nuisance. The City of Midland Municipal Court may issue necessary orders to enforce the procedures set forth in this Ordinance, to abate nuisances, and all other orders necessary to enforce this ordinance.

SECTION NINE. Variances

(A) The purpose of the variance procedure is to allow for an adjustment of a requirement of this Ordinance, owing to special and unique conditions, where the literal enforcement of the Ordinance provisions would result in unnecessary hardship.

(B) Hearings Officer's Decision. The Hearings Officer shall be the City Manager or his designee. Within ten (10) days after receiving the application, the Hearings Officer shall review the written application and the recommendation of the Building Official and shall conduct a public hearing on the application. The Hearings Officer may decide to permit such variance where the literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, and where such variance is necessary to permit a specific lot which differs from other lots in the same district by being of such restricted area, shape or slope that it cannot be developed in a manner commensurate with uses permitted by this Ordinance. A modification of the standards established by this Ordinance shall not be granted to relieve a

self-created hardship, nor for financial reasons only. Following the public hearing, the Hearings Officer will reach a final decision in writing granting a variance only if the applicant demonstrates:

(1) That the request is not contrary to the public interest so that the spirit of the Ordinance is observed and substantial justice done;

(2) That there are some unique characteristics associated with the site; and

(3) That the hardship is not self-created or solely based on financial reasons.

(C) If any such variance is granted, it shall be effective for no more than two (2) years, and shall apply to no more than two (2) specific Motor Vehicles. The variance shall only apply to one specific address.

(D) A parking permit shall be issued by the Building Official upon application and payment of the fee authorized in this Ordinance, only to the Owner of a Motor Vehicle to which a variance is granted under this Ordinance. The parking permit shall be affixed to the motor vehicle by the Owner.

(E) The Building Official is authorized to establish an annual residential parking permit fee to cover only the administrative costs of permits issued pursuant to the provisions of this Ordinance. The fee shall not exceed \$5.00 per vehicle.

(F) Limitation on Reapplication. No application to the Hearings Officer for a variance shall be allowed on the same piece of property prior to the expiration of six months from a previous ruling by the Hearings Officer. Unless an event has occurred so as to alter the facts and conditions on which the previous Hearings Officer action was based. Such change of circumstances shall permit the rehearing of an application by the Hearings Officer prior to the expiration of a six months period, but such conditions shall in no way have any force in law to compel the Hearings Officer, after a hearing, to grant a subsequent appeal. Such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.

SECTION TEN. The Owner of a motor vehicle, who resides at the property for which a variance is granted pursuant to the provisions of this Ordinance, and who has affixed to said motor vehicle a valid parking permit issued pursuant to the provisions of this Ordinance, shall not be prohibited from parking on any unpaved surface on said property unless specifically limited by the variance.

SECTION ELEVEN. The provisions of this Ordinance are to be cumulative of all other Ordinances or parts of Ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior Ordinances or parts of Ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION TWELVE. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Midland hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION THIRTEEN. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00) pursuant to State law. The definition of all offenses under this Ordinance does not require a culpable mental state. The definition of all offenses under this Ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this Ordinance, that the culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FOURTEEN. The Interim City Secretary is hereby authorized and directed to publish the entire Ordinance in the manner and for the length of time prescribed by the law.

SECTION FIFTEEN. The effective date of this Ordinance shall be May 1, 2011.

SECTION SIXTEEN. That the relocation of a motor vehicle that is in violation of this Ordinance to another location in the City of Midland after a proceeding for the abatement and removal of the vehicle has commenced has no effect on the proceeding.

The above and foregoing Ordinance was duly proposed, read in full and adopted on first reading, the 22nd day of June, A.D., 2010; and passed to second reading on motion of Council member James, seconded by Council member Morales, by the following vote:

Council members voting "AYE": Morales, Trost, Hailey, Perry,
James and Sparks

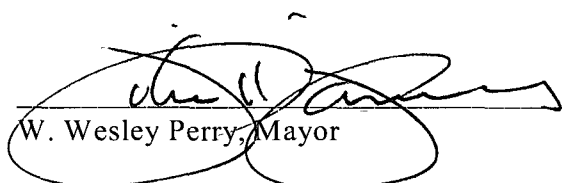
Council members voting "NAY": None

The above and foregoing Ordinance was read in full and finally adopted by the following vote upon motion of Council member Hailey, seconded by Council member Morales, on the 16th day of November, A.D., 2010, at a regular meeting of the City Council:

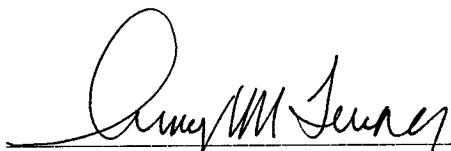
Council members voting "AYE": Morales, Trost, Hailey, Perry,
James and Sparks

Council members voting "NAY": None

PASSED AND APPROVED THIS 16th day of November, A.D., 2010.


W. Wesley Perry, Mayor **Mayor pro tem for**

ATTEST:



Amy M. Turner, Interim City Secretary

APPROVED AS TO FORM:



Keith Stretcher, City Attorney

City of Midland

Memo

To: Courtney Sharp, City Manager
From: Rick Arellano, Code Enforcement Supervisor
CC: Rick Crownover, Steve Thorpe
Date: June 16, 2010
Re: Front Yard Parking

As requested, here is a brief summary of our meeting this morning concerning front yard parking:

***City of Arlington**

Corner Lot –

Front yard – all vehicles must be parked on a concrete or asphalt surface suitable for parking

Side yard - all vehicles must be parked on a concrete or asphalt surface suitable for parking or be parked behind a screening fence

Rear yard - all vehicles must be parked on a concrete or asphalt surface suitable for parking or be parked behind a screening fence

Interior Lot-

Front yard – all vehicles must be parked on a concrete or asphalt surface suitable for parking

Side yard - all vehicles must be parked on a concrete or asphalt surface suitable for parking or be parked behind a screening fence

Rear yard – no regulations apply

Screening fence: must be at least six (6') foot in height of stone, brick, pierced brick or block, uniformly colored wood or other permanent material which forms a visual barrier of equal character, density and design.

Procedure: 1) owner/occupant is notified of parking violation; 2) re-inspection is made within twenty-four (24) hours; 3) if property is under compliance, case is closed; if not, a citation will be issued.

***City of Abilene**

-Requires that all vehicles, including cars, trucks, trailers, recreational vehicles, travel trailers, boats or other watercraft, and motorcycles, be parked on an improved surface unless they are completely screened from public view.

-Parking surfaces, as well as accompany maneuvering areas, shall be composed of pavement, concrete, bricks, or a similar material. Gravel may be used, but it must be a granular limestone, sandy gravel, or an asphalt milling. Material shall be compacted to a density similar to the surrounding natural soils and shall not be contaminated with topsoil or vegetation. The gravel shall be a minimum of 3" deep after compacting and must not allow rutting or any other penetration of top soil or vegetation. Gravel driveways must also be contained and clearly defined from the rest of the yard either by lowering the ground surface enough to allow the top of the gravel to be even with the existing yard or by using some form of physical barrier such as landscape edging, bricks, concrete edging, or a similar treatment.

Procedure: 1) make certain at least two tires are off pavement; 2) photograph the vehicle and license plate; 3) attempt contact at location and have owner/occupant sign a "Notice of Violation" form stating the ordinance; 4) send certified letter with an "Off-Street Parking Regulations" flyer enclosed with a ten-day (10) re-inspection date; 5) if property is under compliance on re-inspection date, the case will be closed. If the property is in violation within a six-month period, a citation will be issued; 6) if property is not under compliance, a citation will be issued.

***City of Wichita Falls**

-No parking will be permitted on unpaved or grassy surfaces within the area defined as the front yard or exterior side yard, unless recognized as the primary driveway serving a residence.

Procedure: 1) send a courtesy notice to the owner/tenant with a ten (10) day re-inspection date; 2) if the property is in compliance on re-inspection date, case if closed; 3) if the property comes under the same violation during the calendar year, a citation may be issued.

***City of Lubbock**

-In areas where there are curbed and guttered streets, all vehicles (including recreational dual purpose vehicles) recreational vehicles, and recreational equipment or trailers, whether oversized or not, that are within the established front yard setback shall only be parked on driveways, or on paved off-street parking areas

-In areas where there are curbed and guttered streets, all vehicles (including recreational dual purpose vehicles) recreational equipment or trailers that are within the side yard adjacent to the street on corner lots, shall only be parked on driveways, or on paved off-street parking areas or behind a screening fence. In no event shall parking be allowed in the right-of-way or parkway. For this section side yard shall be that yard between the side building line and the side lot line, if any, and from the established front setback line to the rear property line.

- In areas where there are curbed and guttered streets, all recreational vehicles and oversized recreational equipment or trailers that are within the side yard adjacent to the street on corner lots, shall only be parked behind a screening fence. In no event shall parking be allowed in the right-of-way or parkway. For this section side yard shall be that yard between the side building line and the side lot line, if any, and from the established front setback line to the rear property line.

Procedure: 1) a citation is issued when violation is observed; no warnings or notices sent.

***City of College Station**

-Driveway surface must be concrete, asphalt, or gravel; however, if in time weeds/grass begin growing through the gravel pavement, improvements shall be taken to correct the problem.

-Educating the public regarding parking issues is a high priority with the City of College Station.

-Code Officers issue parking citations in residential areas.

-College Station also has a separate parking ordinance regarding commercial properties. The ordinance concerns parking in designated landscaped areas of the property. College Station police officers issue the parking citations on commercial property.

Procedure: 1) at least two (2) tires will need to be parked off-pavement to be considered a violation; 2) photos taken of vehicle(s); 3) a flyer explaining the ordinance with the date, name of the Code Officer, address of the property, and license plate number is placed on the vehicle(s); 3) re-inspection is made the following day; 4) if property is under compliance, the case is closed; if not, a citation will be issued.

The cities of Odessa, Amarillo, and San Angelo do not have an ordinance concerning front yard/off-pavement parking.

Please let me know if you have any questions concerning this memo. Thank you.